

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Telecommunications Relay Services for)	
Individuals with Hearing and Speech)	CC Docket No. 98-67
Disabilities, and the Americans with)	
Disabilities Act of 1990)	

**MCI REPLY COMMENTS
PETITIONS FOR STAY**

MCI hereby strongly supports the requests for Stay of the *Bureau 2004 Rate Order*¹ filed by Hands On Video Relay Services, Inc. (HOVRS) and Consumer Service for the Deaf (CSD).² CSD and HOVRS both request an emergency stay of the *Bureau 2004 Rate Order*, which, if granted, would return rates for all relay services to the final 2003 rates established in the Commission's *Final 2003 Rate Order*.³ As CSD points out, the Commission has discretion to grant a stay if 1) denying the stay would cause irreparable harm to the parties seeking a stay; 2) if a stay would not harm third parties, and 3) if a stay would be in the public interest. CSD also

¹ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (*Bureau 2004 Rate Order*) CC Docket No. 98-67, DA 04-1999, rel. June 30, 2004.

² Hands on Video Relay Services, Inc., Emergency Petition for Stay, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, filed July 20, 2004 (*HOVRS Petition for Stay*) and Petition for Emergency Stay, Communication Service for the Deaf, CC Docket No. 98-67 (*CSD Petition for Stay*), filed July 26, 2004.

³ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, (*Final 2003 Rate Order*) CC Docket No. 98-67, DA 04-137, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, rel. June 30, 2004.

notes that the Commission has granted stays when it is necessary to preserve the status quo, and when not issuing a stay would seriously harm those seeking a stay but not harm others.⁴

CSD and HOVRS both show that users of VRS would be seriously harmed if the Commission did not retain the 2003 VRS rates. The Consumer and Governmental Affairs Bureau (CGB) has admitted that the 2004 VRS rates are not compensatory.⁵ CGB's method for calculating cash working capital is deficient and at odds with Commission precedent.⁶ HOVRS also documents numerous instances where the National Exchange Carriers Association ("NECA") denied costs without providing public, rebuttable, explanations.⁷ Nor did the *Bureau 2004 Rate Order*. The Bureau's invitation to provide additional data for those whose costs were disallowed,⁸ holding out the hope of gaining retroactive relief, rings hollow in light of the Commission's granting retroactive correction to the *Bureau 2003 Rate Order* only to September 2003.⁹

More generally, and ominously, the Commission's newly articulated standard that the benchmark of reasonable costs and compensatory rates is no longer the recovery of costs needed to provide functionally equivalent service, including the promotion of new relay technologies, but rather only "accommodation."¹⁰ This new standard clearly harms all providers of all relay

⁴ *CSD Petition for Stay* at 3.

⁵ *Bureau 2004 Rate Order*, & 38. See also *Final 2003 Rate Order*, & 195 ("...the Bureau determined, for example, that markups on costs are not reasonable for a service that is an accommodation for persons with disabilities..")

⁶ HOVRS at 20.

⁷ See e.g., HOVRS *Petition for Stay* at 26-33.

⁸ *Bureau 2004 Rate Order*, & 44.

⁹ *Final 2003 Rate Order*, & 166.

¹⁰ *Bureau 2004 Rate Order*, & 31, n. 84.

services who wish to innovate, and for this reason too, MCI supports the Commission staying the *Bureau 2004 Rate Order*, not only for VRS, but for all relay services.

MCI contends that other parties will not be harmed by granting a stay. The difference between the \$7.293 and \$8.854 for VRS; the difference between \$1.44 and \$2.445 for STS; and the difference between \$1.349 and \$1.368 for Text and IP Relay would not significantly modify the TRS carrier contribution factor which is spread out among thousands of carriers earning \$81 billion dollars, but does seriously degrade reimbursement for the less than dozen relay providers who will withdraw roughly \$571 million from the Interstate Relay Fund (“Fund”) for 2004-2005. Put differently, CGB reports that it disallowed approximately \$110 million, or 16 percent, from the \$681 million relay providers stated they needed to be made whole. If these costs had not been disallowed the carrier contribution factor would have increased by one-tenth of one percent.¹¹ Clearly a significant hardship is being imposed on relay providers by not staying the *Bureau 2004 Rate Order* and a hardship would not be imposed on carriers were a stay granted.

Finally, a stay is strongly in the public interest. Thousands of deaf and hard-of-hearing persons have become reliant on VRS, and a thousand of them have notified the Commission they have been harmed by the reduction in VRS rates which has increased wait times and reduced quality of service. Moreover, the *Final 2003 Rate Order* has codified a completely new methodology for setting reimbursement rates for relay providers and established a new benchmark for the consideration of reasonable costs that is in violation of Congress’ Section 225 mandate to implement regulations that do not discourage or impair the development of improved relay technologies. For these reason, the Commission must stay its Final 2003 Rate Order until the issues raised by this Order are resolved, either through its forthcoming Further Notice of

¹¹ See Bureau 2004 Rate Order §§§§ 18, 19, 22 25, 28

Proposed Rulemakings, Reconsideration Petitions, or possibly on remand from an appellate court. MCI agrees with the substance of the comments filed in the Applications for Review filed by CSD, HOVRS and the National Video Relay Service Coalition,¹² but has concluded that response to the *Final 2003 Rate Order* is the appropriate Order to address. Because this Order has not yet been published in the Federal Register, and it will many months for the rulemaking, petitions for reconsideration, or petitions for review to be resolved, it is imperative for the Commission to stay the *Bureau 2004 Rate Order*.

Respectfully submitted,

/s/Larry Fenster

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¹² Hands on Video Relay Services, Inc., Application for Review, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, filed July 20, 2004, Communication Service for the Deaf, Application for Review, CC Docket No. 98-67, filed July 26, 2004; National Video Relay Service Coalition, Application for Review, CC Docket No. 98-67, filed July 20, 2004

Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2004

/s/ Larry Fenster

Larry Fenster